IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR

Dinesh Chand Gupta v Sedu Ram & Ors.
SB Civil Misc. Appeal No. 585/1996

Date of Judgment: 13th April 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Ram Singh Rathore for the Appellant
None present for the respondent.

(Per Court):

Dissatisfied with the compensation amount granted by the Motor Vehicle Accident Claims Tribunal, Jaipur District for the damage caused to his jeep, the appellant has challenged the order dated 27-11-95 passed by Motor Accident Claims Tribunal, Jaipur District, before this court.

In a nutshell the facts of the case are that in the evening of 12-1-1990, a jeep, bearing Registration No. RPH 1494, belonging to the appellant, was carrying passengers from Jaipur to Dausa. While the jeep driver was driving the said jeep at a normal speed, suddenly from the opposite direction,

a truck, bearing Registration No. RND 3453, being driven in a most rash and negligent manner, came and hit the jeep. Consequently, not only some of the passengers died, and others sustained injuries, but the jeep was also badly damaged badly. The passengers who were injured, the dependents of those passengers who had died and the appellant who had almost lost his jeep all filled different claim petitions before the learned Tribunal. According to the appellant as a result of the accident, the chassis of the jeep was bent, the radiator was broken, the gear hosing was ruptured, the hood cover and the hood frame were shattered, the steering wheel, the steering assembly, the self-dynimo were also damaged. Since the jeep was badly damaged, he sought a claim of Rs. 2 lacs. In order to substantiate his case, the appellant examined himself and Mr. Pramod Chabbra, a Surveyor as witnesses. He also produced the Surveyor Report (Ex. 32), photographs of the damaged jeep (Exs. 33-42), and the receipt of the fees paid to the surveyor as documents. After hearing the parties, the learned Tribunal awarded a mere compensation of Rs. 41, 549/- along with 12

% interest w. e. f. 19-2-1990 and also imposed a penal interest of 15% in case the compensation amount is not paid with the period of one month. Hence, this appeal before this court.

Mr. Ram Singh Rathore, the learned counsel for the appellant, has contended that neither the surveyor Mr. Prem Chhabra nor his survey report could be demolished by the respondents. There is no reason to disbelieve the extent of damage suffered by the jeep. Moreover, although it is not a case of contributory negligence, still for reasons best known to the Tribunal, it has denied 50% of the compensation to the appellant.

Since no one has appeared on behalf of the Insurance Company, this court does not have the benefit of any assistance on behalf of the respondent.

A bare perusal of the impugned award clearly reveals that the Tribunal had concluded that the accident had

occurred due to negligence of the truck driver and not due to the negligence of the jeep driver. Thus clearly it was not a case of contributory negligence. Although the Tribunal concluded that the appellant has spent Rs. 77,620/- on getting the jeep repaired, without assigning any reason, the learned Tribunal reduced the said amount by 50%. Thus, according to the learned Tribunal, the appellant was entitled to only Rs. 38,810 alongwith the fees of the Surveyor which was Rs. 2,739/-. Thus, he was entitled to only Rs. 41,549/-. Since it was not a case of contributory negligence, this court fails to understand as to why the entire amount of Rs. 77,620/- was not granted to the appellant. The said amount of damage incurred is borne out by the certificate issued by the Surveyor. The testimony of Mr. Chhabra has not been demolished by the respondents. Therefore, this court has no option but to modify the award dated 27.11.1995 qua the appellant's claim for payment of compensation for the damage caused t o his jeep. It is directed that the respondent-Insurance Company shall pay a compensation of Rs. 77,620/- alongwith an amount of Rs. 2,739 to the appellant alongwith an interest of

9% with effect from 19.2.1990. To this limited extent, the award dated 27.11.1995 shall stand modified. In case the Insurance Company has already paid the compensation amount awarded to the appellant by the learned Tribunal, the same shall be adjusted in the enhanced amount. The learned Tribunal is directed to recover the remaining amount alongwith interest from the respondent-company within a period of three months from the date of the receipt of the certified copy of this order.

(R.S. CHAUHAN) J.